

## A Good Decision on Racism

On 27<sup>th</sup> March this year I listened to Minister of Justice, Tuija Brax, address a conference in Helsinki, *Side Effects of Free Mobility*. Jointly organised by Helsinki City Council and Helsinki Police Department, it centred on problems associated with foreign beggars and prostitutes entering the city's streets as a result of European expansion and migration. Taking the attention away from 'foreignness' as the essence of the problem, the Minister pointed to *racism* as a 'side effect of free mobility'.

"Finland is rapidly becoming more multicultural," she said adding that irrational fears might follow precisely because the change has been so rapid. "Official statistics construct a darker view of multiculturalism in Finland than attitude studies seem to show," she continued, referring to increases in the number of suspected racist crimes reported to the police and complaints of racial discrimination to the Ombudsman. Fully supporting the principle of working in partnership, she concluded that racism prevention needed to feature in all future police and municipality security plans. For in the present times of recession she feared a hardening of racist attitude and suspicion toward ethnic minorities and immigrants. And though not aware of any evidence so far, she suspected the emergence of racist sub-cultures among some of the city's more socially excluded populations. "The task is to reverse this trend," she urged, with a note that "Narrow and exclusive nationalist extremism should be condemned."

I raised a question. Because I live in Eastern Helsinki and have seen evidence of the extremism and racist sub-culture she fears might be out there. Since mid-September 2008 a large Nazi Party swastika flag has been publicly displayed from a skinhead's balcony window. As a clear expression of racism in an otherwise happily multicultural area of families with children, it is as unavoidable as it is offensive. And despite complaint to the police both in autumn and spring it remained eight months until at least mid-May. And that's the problem. Not so much the public display of racially inflammatory material itself but the stance the prosecutor's office seems to have taken. For, according to local police, it is not seen as *ethnic agitation* under Finland's penal code. I find this hard to accept. But if it is the case, then something needs to be done to change the law if we are, as the minister rightly said, to reverse the trend of racism and tackle racist sub-culture.

Skipping the Nazi flag anecdote, I simply asked the minister for her views on the adequacy of Finland's current laws to deal with expressions of racism. I was encouraged to hear that she fully recognised the EU's recent Framework Decision on racism and xenophobia and that she will be working to change Finland's traditional stance of 'being too polite', as she tactfully put it, to prosecute 'hate speech', having hitherto tended to accept it as 'freedom of expression'. So good news from Europe.

Resisted mainly by Italy on the grounds of 'freedom of expression', the Council of the European Union's Framework Decision on *combating certain forms and expressions of racism and xenophobia by means of criminal law* was made on 28 November 2008. As the title suggests, the Decision limits itself to the criminal law, recognising of course that the problem of racism and xenophobia requires measures beyond that alone. What it provides is a standard framework for Member States to adopt as a common criminal law approach in respect of *incitement to racial hatred* as a specific offence, punishable by maximum imprisonment of between 1 and 3 years.

The Decision came into force on 6 December and gives Member States until 28 November 2010 to take the necessary steps needed to comply with its provisions. The EU Council will then assess the extent of compliance by 28 November 2013. What it makes clear is that the offence can be committed by use of '*pictures or other material*'. It is therefore not limited to words and writing but can be applied to racist signs and symbols, such as Nazi flags. This seems to overcome an apparent sticking point in the application of Finland's existing ethnic agitation offence.

A Nazi flag hung from a balcony in North West Helsinki was reported on in the media last September. As in Eastern Helsinki, police told residents it was *not* an offence of ethnic agitation. In this case residents then took the law into their own hands and tore the offending article down. Personally I fail to see why the insulting statement of racial hatred spread by the display of a Nazi flag from a balcony window for eight minutes, let alone eight months as in my local case, is not an offence of ethnic agitation. Whatever the reasons, the EU's Decision on racism is good precisely because it affords a timely opportunity to address any existing blockages in dealing with such expressions of racism by criminal law.

And a most crucial part of the EU's Framework in this is for Member States to ensure that neither the offence's investigation nor prosecution should be "*dependent on a report or an accusation made by a victim of the conduct [in question]*." In other words, the police can actively self-initiate investigations and people who report such cases can do so anonymously without having to be called as a witness. Like drug offences, the Framework's offence of incitement to racial hatred will not require a victim. This is a good decision, given the intimidating nature of extremism.

Besides *incitement*, the Decision also requires that racist and xenophobic *motivation* be either considered an aggravating factor in other criminal offences or considered by the courts in determining penalties. This is already the case in Finland and its recognition in police investigation practices and court-sentencing processes is being developed. This has been noted in recent media debate surrounding the 8-year old Somali girl pushed to the ground with a racist slur while trying to board a train in Western Espoo. The incident further exemplifies the trend the Minister of Justice is calling local police and municipalities to help reverse with the racism prevention strands of local security programmes. And so I think the provisions of the EU's Framework Decision will be good. But only if actively used at the initiative of the police and the courts. For such action will publicly signal, with the full backing of criminal law enforcement, our society's abhorrence of racism.

Dr. Jonathan Hadley  
Helsinki, 27 May 2008.